Separation of Judicial from Executive functions

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*85 Q.—Mr. S. SATYAMURTI: Will the hon. the Law Member be pleased to state—

(*a*) when this Government addressed the Government of India on the question of the separation of the judicial from executive functions and what the reply of the Government of India was; and

(*b*) whether this Government propose to take any further steps in the matter; and if not, why not?

A.—(*a*) On 28th February 1927. The reply of the Government of India is the same as the answer given to a question on the subject in the Council of State on the 11th September 1928. The answer is as follows:—

"The hon. Mr. H. G. Haig: As the hon. Member is aware, the question of the separation of judicial and executive functions has been under the consideration of Government for some time, and it is desirable that I should explain the position fully with reference to recent events. On the 9th March 1921 the hon. Mr. G. M. Bhurgri moved in this House a resolution recommending to the Governor-General in Council to make a definite declaration that the time had arrived for the complete severance of judicial from executive functions and that early steps would be taken to accomplish the severance almost immediately. The Resolution was withdrawn on an undertaking being given on behalf of Government that if any Local Government decided to take up this question which related to a Provincial subject, the Government of India would raise no objection, and would proceed to make such legislative changes as might be necessary to give effect to the proposals of the Local Government. In pursuance of this policy which was announced in the Resolution of the Government of India in the Home Department, No. F. 196, Judicial, dated the 7th December 1921, and in response to local public opinion, certain Provincial Governments proceeded to prepare schemes of separation, which were submitted to the Government of India. On a consideration of these schemes the Government of India came to the conclusion that as the present system of judicial administration is a uniform system, so any alterations should be planned on uniform lines with a view to maintaining uniformity of system in essential principles. They are no longer able to hold that the problem is one for each province to settle on lines of its own choice, or that the responsibility of the Central Government could be restricted to facilitating such legislation as might be required to give effect to Provincial decisions. They have, therefore, decided with the concurrence of the Secretary of State, that though minor variations in the provinces might conceivably be accepted,

7th August 1929]

the problem must be dealt with on lines substantially uniform. At the present time, however, in view of the inquiry by the Statutory Commission and possible changes in conditions which may result therefrom, it has been decided that it is not possible to reach conclusions on the main question, and a decision must therefore be postponed until the factors that will condition the problem in the future have become more plain."

(*b*) No.

Mr. S. SATYAMURTI :—"With reference to the answer to clause (*a*), may I know whether this Government received any reply from the Government of India?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—"Yes, Sir."

Mr. S. SATYAMURTI :—"May I know whether it merely included an extract from the answer given in the Council of State or whether there was any other reply from the Government of India?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—"I am sorry that without the permission of the Government of India I am not at liberty to disclose the contents of that document."

Mr. S. SATYAMURTI :—"I ask for your ruling on this matter, Sir. Unless the matter is a matter of controversy between this Government and the Government of India, this Government is bound to answer these questions. I think the question came up some time ago and you were pleased to rule that unless it be a matter of controversy—it would not do if it is a mere matter of correspondence—the Government are bound to answer the questions put to them. I want to know what are the public interests that would be affected by telling us what the reply of the Government of India was."

The hon. the PRESIDENT :—"I do not think the hon. Member said that it would not be in public interests."

Mr. S. SATYAMURTI :—"May I know what are his reasons?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—"The practice is that without the permission of the Government of India, we are not at liberty to disclose the contents."

Mr. S. SATYAMURTI :—"What is the rule under which he claims this privilege?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—"That is the practice and convention."

The hon. the PRESIDENT :—"The hon. the Law Member again wants a ruling from me, though I have already given a ruling; and my memory is that in my opinion ruling was agreed to by the Members of Government. This is what is stated in rule 9 of the Council Rules:

'In matters which are or have been the subject of controversy between the Governor-General in Council or the Secretary of State and the Local Government, no questions shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.'

"Here taking the statement of the hon. the Law Member himself, the present case is not one where there is a controversy between this Government and the Government of India, or the Secretary of State. Nor did he make the convenient reply 'In the State interests I won't disclose information.'

He says it is a matter of etiquette that he cannot give out the contents of certain correspondence without the permission of the Government of India. In the circumstances I would suggest to him to answer the question under rule 9."

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" What is contained in the answer forms the only contents of that letter from the Government of India."

Mr. S. SATYAMURTI :—" In the course of the answer, the Government have stated 'They have, therefore, decided with the concurrence of the Secretary of State, that though minor variations in the provinces might conceivably be accepted, the problem must be dealt with on lines substantially uniform'. I am asking whether this Government have considered or propose to consider any minor variations dealing with the problem at least to the extent to which it has become very urgent ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" Minor variations have already been introduced by the establishment of stationary sub-magistrates' courts."

Mr. S. SATYAMURTI :—" Has any other thing been done ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" No, Sir."

Mr. S. SATYAMURTI :—" Has Government under contemplation any other minor variations ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" No."

Mr. D. THOMAS :—" May I know if the suggestion of this Government is in the direction of separation ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" Yes."

Mr. D. THOMAS :—" Do not the stationary sub-magistrates continue under the control of the District Collectors ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" Their being under their control has nothing to do with the separation of the judicial and executive functions."

(Mr. S. Satyamurti :—Live and learn.)

Mr. S. SATYAMURTI :—" With regard to the last sentence 'At the present time, however, in view of the inquiry by the Statutory Commission, etc., etc.,' may I know whether this Government agrees with the view that large reforms like this should await statutory changes ?"

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" That is a matter of opinion."

Mr. S. SATYAMURTI :—" I am not asking his opinion, I am asking in regard to the Government of India's statement, whether this Government considered this question and then agreed with the Government of India view that large constitutional changes must await the introduction of new reforms ?"